

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VERNON HOBOCK,

Plaintiff,

vs.

No. CIV 98-1559 JC/RLP (ACE)

BOARD OF COUNTY COMMISSIONERS,
et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court upon Plaintiff's Motion for Certification of Frivolousness of Defendants' Interlocutory Appeal, filed July 13, 1999 (*Doc. 45*). The Court, having reviewed the memoranda of the parties and the applicable law, and being otherwise fully advised in the premises, finds that the motion is not well taken and will be denied.

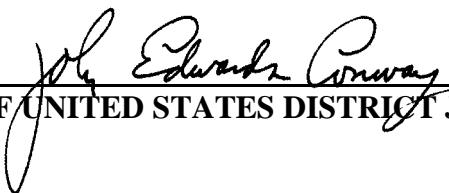
The facts of this case are set forth in this Court's Memorandum Opinion and Order of June 1, 1999 (*Doc. 37*). In that opinion and order, the Court denied Defendants' first Motion to Dismiss which argued for dismissal of the case on the grounds that the State of New Mexico is a necessary and indispensable party which cannot be joined due to Eleventh Amendment immunity. The Court also denied Defendants' Second Motion to Dismiss on June 1, 1999 (*Doc. 38*). The Second Motion to Dismiss was based upon Eleventh Amendment immunity, quasi-judicial immunity, and qualified immunity arguments. Defendants have since filed a timely notice of appeal of the denial of their motions to dismiss. Plaintiff now moves this Court to certify the appeal as frivolous. *See Stewart v. Donges*, 915 F.2d 572, 578 (10th Cir. 1990).

The Tenth Circuit has stated that “[a]n appeal is termed frivolous if the result is obvious, or the arguments of error are wholly without merit.” *Autorama Corp. v. Stewart*, 802 F.2d 1284, 1288 (10th Cir. 1986). Moreover, “an appeal challenging the judge’s interpretation would not be frivolous.” *Donges*, 915 F.2d at 579. In this matter, Defendants challenge this Court’s interpretation of the relevant law and the application of that law to the facts as stated in the Complaint. Under the standard articulated above, this Court does not believe that Defendants’ appeal is frivolous.

Wherefore,

IT IS ORDERED that Plaintiff’s Motion for Certification of Frivolousness of Defendants’ Interlocutory Appeal (*Doc. 45*) is **denied**.

DATED this 13th day of September, 1999.



CHIEF UNITED STATES DISTRICT JUDGE

Counsel for Plaintiff: Philip B. Davis
Albuquerque, New Mexico

H. R. Quintero
Robinson, Quintero & Lopez, P.C.
Silver City, New Mexico

Counsel for Defendants: Mark J. Riley
Rosario Dyana Vega
Riley, Shane & Hale, P.A.
Albuquerque, New Mexico